

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

CHARLES SWEENEY,)	
)	
Plaintiff,)	
)	
vs.)	2:12-cv-366-JMS-DKL
)	
STATE OF INDIANA, OFFICE OF)	
THE ATTORNEY GENERAL,)	
)	
Defendant.)	

Entry Discussing Motion for Reconsideration

Charles Sweeney, an Indiana prisoner, brought an action which the court deemed to be an unauthorized second or successive petition for a writ of habeas corpus challenging his conviction in an Indiana state court for murder. The action was dismissed for lack of jurisdiction based on the barrier created by 28 U.S.C. § 2244(b).

Sweeney has filed a motion for reconsideration. This was filed with the clerk within 28 days from the entry of judgment on the clerk's docket.

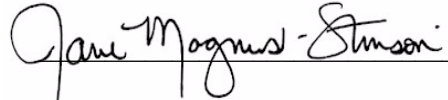
Given the timing of the motion to reconsider relative to the entry of final judgment, and given the arguments set forth in such motion, the motion is treated as a motion to alter or amend judgment pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure*. See *Borrero v. City of Chicago*, 456 F.3d 698, 701-02 (7th Cir. 2006) (explaining that whether a motion filed within 10 days of the entry of judgment should be analyzed under Rule 59(e) or Rule 60(b) of the *Federal Rules of Civil Procedure* depends on the *substance* of the motion, not on the timing or label affixed to it); *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174 (1989) (noting that Rule 59(e) encompasses reconsideration of matters decided on the merits).

Rule 59(e) "authorizes relief when a moving party 'clearly establish[es] either a manifest error of law or fact' or 'present[s] newly discovered evidence.'" *Souter v. International Union*, 993 F.2d 595, 599 (7th Cir. 1993) (quoting *Federal Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986)).

There was in this case no manifest error of law or fact. The court did not misapprehend Sweeney's claim, nor did it misapply the law to that claim. Accordingly, the post-judgment motion for reconsideration, treated as a motion to alter or amend judgment [9], is **denied**.

IT IS SO ORDERED.

Date: 01/14/2013


Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution:

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